

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAYMOND NORMAN RUDDER,

Defendant-Appellant.

UNPUBLISHED

October 14, 2003

No. 249040

Wayne Circuit Court

LC No. 02-015154

Before: Fitzgerald, P.J., and Zahra and Fort Hood, JJ.

MEMORANDUM.

Defendant appeals by leave¹ the trial court's order granting the prosecution's motion to admit similar acts evidence under MRE 404(b). We reverse.

Defendant claims that the lower court erred in granting the prosecution's motion to admit similar acts evidence under MRE 404(b). We agree. A trial court's evidentiary rulings are reviewed for abuse of discretion. *People v Manser*, 250 Mich App 21, 31; 645 NW2d 65 (2002).

The trial court, after applying the general MRE 404(b) test, (see *People v VanderVliet*, 444 Mich 52, 74; 508 NW2d 114 (1993)), found there was "enough similarity to show that similar acts would be admissible under MRE 404(b)." On appeal, the prosecution concedes that the other acts evidence was offered to establish defendant's identity. Because the prosecution offered the evidence to show defendant's identity as the perpetrator through modus operandi, the trial court was required to apply the test from *People v Golochowicz*, 413 Mich 298, 308-309; 319 NW2d 518 (1992): (1) there must be substantial evidence that the defendant committed the other act; (2) there must be some special quality of the act that tends to prove the defendant's identity; (3) the other-acts evidence must be material to the defendant's guilt of the charged offense; and (4) the probative value of the other-acts evidence must not be substantially

¹ This Court originally denied defendant's application for interlocutory review "for failure to persuade the Court of the need for immediate appellate review." *People v Rudder*, unpublished order the Court of Appeals, issued April 14, 2003 (Docket No. 247501). Defendant appealed to the Supreme Court, and "in lieu of granting leave to appeal," remanded "this case to the Court of Appeals for consideration on leave granted." *People v Rudder*, unpublished order of the Supreme Court, decided June 12, 2003 (Docket No. 123770).

outweighed by the danger of unfair prejudice. See also *People v Smith*, 243 Mich App 657, 671; 625 NW2d 46 (2000), and *People v Ho*, 231 Mich App 178, 186; 585 NW2d 357 (1998). Moreover, the admission of evidence of the separate offense is justified only where “the circumstances and manner in which the two crimes were committed are [s]o nearly identical in method as to earmark [the charged offense] as the handiwork of the accused.” *People v Knox*, 256 Mich App 175, 192-193; 662 NW2d 482 (2003) (internal citations omitted). Further, “much more is demanded than the mere repeated commission of crimes of the same class, such as repeated burglaries or thefts.” *Id.*, at 193. Rather “[t]he [commonality of circumstances] must be so unusual and distinctive as to be like a signature.” *Id.* Because the trial court did not apply the proper test, reversal of the order to admit similar acts evidence under MRE 404(b) is required.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Brian K. Zahra
/s/ Karen M. Fort Hood